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JESUS GARCIA

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JESUS GARCIA,

Plaintiff,

vs.

DNA PROPERTIES, INC.; and DOES 1 to  
10,

Defendants.

**Case No.:**

COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES FOR  
VIOLATION OF:

1. AMERICANS WITH DISABILITIES  
ACT, 42 U.S.C. §12131 et seq.;
2. CALIFORNIA'S UNRUH CIVIL  
RIGHTS ACT, CAL CIV. CODE §§ 51 -  
52 et seq.;
3. CALIFORNIA'S DISABLED  
PERSONS ACT, CAL CIV. CODE §54 et  
seq.
4. CALIFORNIA'S UNFAIR  
COMPETITION ACT, CAL BUS & PROF  
CODE § 17200, et seq.
5. NEGLIGENCE

Plaintiff JESUS GARCIA ("Plaintiff") complains of Defendants DNA  
PROPERTIES, INC.; and DOES 1 to 10 ("Defendants") and alleges as follows:

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**JURISDICTION AND VENUE**

1  
2 1. The Court has jurisdiction of this action pursuant to 28 USC §1331 for  
3 violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et seq.*)

4 2. Pursuant to pendant jurisdiction, attendant and related causes of action,  
5 arising from the same nucleus of operating facts, are also brought under California law,  
6 including, but not limited to, violations of California Civil Code §§51, 51.5, 52(a), 52.1,  
7 54, 54., 54.3 and 55.

8 3. Venue is proper in this court pursuant to 28 USC §1391(b). The real  
9 property which is the subject of this action is located in this district, Los Angeles County,  
10 California, and Plaintiff's causes of actions arose in this district.

**PARTIES**

11  
12 4. Plaintiff is a California resident with a physical disability with substantial  
13 limitation in his ability to walk. Plaintiff suffers from paraplegia due to T4-T5 spinal  
14 cord injury and requires the use of a wheelchair at all times when traveling in public.

15 5. Defendants are, or were at the time of the incident, the real property owners,  
16 business operators, lessors and/or lessees of the real property for a smoke shop  
17 ("Business") located at or about 5968 Santa Fe Ave., Huntington Park, California.

18 6. The true names and capacities, whether individual, corporate, associate or  
19 otherwise of Defendant DOES 1 through 10, and each of them, are unknown to Plaintiff,  
20 who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of  
21 Court to amend this Complaint when the true names and capacities have been  
22 ascertained. Plaintiff is informed and believes and, based thereon, alleges that each such  
23 fictitiously named Defendants are responsible in some manner, and therefore, liable to  
24 Plaintiff for the acts herein alleged.

25 7. Plaintiff is informed and believes, and thereon alleges that, at all relevant  
26 times, each of the Defendants was the agent, employee, or alter-ego of each of the other  
27 Defendants, and/or was acting in concert with each of the other Defendants, and in doing  
28

1 the things alleged herein was acting with the knowledge and consent of the other  
2 Defendants and within the course and scope of such agency or employment relationship.

3 8. Whenever and wherever reference is made in this Complaint to any act or  
4 failure to act by a defendant or Defendants, such allegations and references shall also be  
5 deemed to mean the acts and failures to act of each Defendant acting individually, jointly  
6 and severally.

7 **FACTUAL ALLEGATIONS**

8 9. In or about July of 2022, Plaintiff went to the Business. The Business is a  
9 smoke shop business establishment, which is open to the public, and is a place of public  
10 accommodation and affects commerce through its operation. Defendants provide parking  
11 spaces for customers.

12 10. While attempting to enter the Business during each visit, Plaintiff personally  
13 encountered a number of barriers that interfered with his ability to use and enjoy the  
14 goods, services, privileges, and accommodations offered at the Business. To the extent  
15 of Plaintiff's personal knowledge, the barriers at the Business included, but were not  
16 limited to, the following:

- 17 a. Defendant failed to maintain the parking space designated for persons  
18 with disabilities to comply with the federal and state standards.  
19 Defendants failed to provide a proper ramp for the persons with  
20 disabilities.  
21 b. Defendant failed to maintain the parking space designated for persons  
22 with disabilities to comply with the federal and state standards.  
23 Defendants failed to provide the access aisles with level surface  
24 slopes.

25 11. These barriers and conditions denied Plaintiff the full and equal access to the  
26 Business. Plaintiff wishes to patronize the Business again. However, Plaintiff is deterred  
27 from visiting the Business because his knowledge of these violations prevents him from  
28 returning until the barriers are removed.

12. Based on the violations, Plaintiff alleges, on information and belief, that there are additional barriers to accessibility at the Business after further site inspection. Plaintiff seeks to have all barriers related to his disability remedied. *See Doran v. 7-Eleven, Inc.* 524 F.3d 1034 (9<sup>th</sup> Cir. 2008).

13. In addition, Plaintiff alleges, on information and belief, that Defendants knew that particular barriers render the Business inaccessible, violate state and federal law, and interfere with access for the physically disabled.

14. At all relevant times, Defendants had and still have control and dominion over the conditions at this location and had and still have the financial resources to remove these barriers without much difficulty or expenses to make the Business accessible to the physically disabled in compliance with ADDAG and Title 24 regulations. Defendants have not removed such barriers and have not modified the Business to conform to accessibility regulations.

### **FIRST CAUSE OF ACTION**

#### **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

15. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

16. Under the Americans with Disabilities Act of 1990 (“ADA”), no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation. *See* 42 U.S.C. § 12182(a).

17. Discrimination, *inter alia*, includes:

- a. A failure to make reasonable modification in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of

1 such goods, services, facilities, privileges, advantages, or  
2 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).

3 b. A failure to take such steps as may be necessary to ensure that no  
4 individual with a disability is excluded, denied services, segregated or  
5 otherwise treated differently than other individuals because of the  
6 absence of auxiliary aids and services, unless the entity can  
7 demonstrate that taking such steps would fundamentally alter the  
8 nature of the good, service, facility, privilege, advantage, or  
9 accommodation being offered or would result in an undue burden. 42  
10 U.S.C. § 12182(b)(2)(A)(iii).

11 c. A failure to remove architectural barriers, and communication barriers  
12 that are structural in nature, in existing facilities, and transportation  
13 barriers in existing vehicles and rail passenger cars used by an  
14 establishment for transporting individuals (not including barriers that  
15 can only be removed through the retrofitting of vehicles or rail  
16 passenger cars by the installation of a hydraulic or other lift), where  
17 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

18 d. A failure to make alterations in such a manner that, to the maximum  
19 extent feasible, the altered portions of the facility are readily  
20 accessible to and usable by individuals with disabilities, including  
21 individuals who use wheelchairs or to ensure that, to the maximum  
22 extent feasible, the path of travel to the altered area and the  
23 bathrooms, telephones, and drinking fountains serving the altered  
24 area, are readily accessible to and usable by individuals with  
25 disabilities where such alterations to the path or travel or the  
26 bathrooms, telephones, and drinking fountains serving the altered  
27 area are not disproportionate to the overall alterations in terms of cost  
28 and scope. 42 U.S.C. § 12183(a)(2).

1        18. Where parking spaces are provided, accessible parking spaces shall be  
2 provided. 1991 ADA Standards § 4.1.2(5); 2010 ADA Standards § 208. One in every  
3 eight accessible spaces, but not less than one, shall be served by an access aisle 96 in  
4 (2440 mm) wide minimum and shall be designated “van accessible.” 1991 ADA  
5 Standards § 4.1.2(5)(b). For every six or fraction of six parking spaces, at least one shall  
6 be van parking space. 2010 ADA Standards § 208.2.4.

7        19. The cross slope of ramp surfaces shall be no greater than 1:50. Ramp  
8 surfaces shall comply with 4.5. 1991 Standards § 4.8.6. Ramps and landings with drop-  
9 offs shall have curbs, walls, railings, or projecting surfaces that prevent people from  
10 slipping off the ramp. Curbs shall be a minimum of 2 in (50 mm) high. 1991 Standards §  
11 4.8.7. Outdoor ramps and their approaches shall be designed so that water will not  
12 accumulate on walking surfaces. 1991 Standards § 4.8.8. Ground and floor surfaces  
13 along accessible routes and in accessible rooms and spaces including floors, walks,  
14 ramps, stairs, and curb ramps, shall be stable, firm, slip-resistant, and shall comply with  
15 4.5. 1991 Standards § 4.5.1.

16        20. Here, Defendants failed to provide a compliant ramp for the access aisle.

17        21. Under the 1991 Standards, parking spaces and access aisles must be level  
18 with surface slopes not exceeding 1:50 (2%) in all directions. 1991 Standards § 4.6.2.  
19 Accessible parking spaces shall be at least 96 in (2440 mm) wide. Parking access aisles  
20 shall be part of an accessible route to the building or facility entrance and shall comply  
21 with 4.3. Two accessible parking spaces may share a common access aisle. Parked  
22 vehicle overhangs shall not reduce the clear width of an accessible route. Parking spaces  
23 and access aisles shall be level with surface slopes not exceeding 1:50 (2%) in all  
24 directions. 1991 Standards § 4.6.3.

25        22. Here, the access aisle is not level with the parking space. Under the 2010  
26 Standards, access aisles shall be at the same level as the parking spaces they serve.  
27 Changes in level are not permitted. 2010 Standards § 502.4. “Access aisles are required  
28

1 to be nearly level in all directions to provide a surface for transfer to and from vehicles.”  
 2 2010 Standards § 502.4 Advisory. *Id.* No more than a 1:48 slope is permitted.

3 23. A public accommodation shall maintain in operable working condition those  
 4 features of facilities and equipment that are required to be readily accessible to and usable  
 5 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a). By failing to  
 6 maintain the facility to be readily accessible and usable by Plaintiff, Defendants are in  
 7 violation of Plaintiff’s rights under the ADA and its related regulations.

8 24. The Business has denied and continues to deny full and equal access to  
 9 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be  
 10 discriminated against due to the lack of accessible facilities, and therefore, seeks  
 11 injunctive relief to alter facilities to make such facilities readily accessible to and usable  
 12 by individuals with disabilities.

### 13 **SECOND CAUSE OF ACTION**

#### 14 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

15 25. Plaintiff incorporates by reference each of the allegations in all prior  
 16 paragraphs in this complaint.

17 26. California Civil Code § 51 states, “All persons within the jurisdiction of this  
 18 state are free and equal, and no matter what their sex, race, color, religion, ancestry,  
 19 national origin, disability, medical condition, genetic information, marital status, sexual  
 20 orientation, citizenship, primary language, or immigration status are entitled to the full  
 21 and equal accommodations, advantages, facilities, privileges, or services in all business  
 22 establishments of every kind whatsoever.”

23 27. California Civil Code § 52 states, “Whoever denies, aids or incites a denial,  
 24 or make any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable  
 25 for each and every offense for the actual damages, and any amount that may be  
 26 determined by a jury, or a court sitting without a jury, up to a maximum of three times the  
 27 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any  
 28



1 attorney's fees that may be determined by the court in addition thereto, suffered by any  
2 person denied the rights provided in Section 51, 51.5, or 51.6.

3 28. California Civil Code § 51(f) specifies, "a violation of the right of any  
4 individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)  
5 shall also constitute a violation of this section."

6 29. The actions and omissions of Defendants alleged herein constitute a denial  
7 of full and equal accommodation, advantages, facilities, privileges, or services by  
8 physically disabled persons within the meaning of California Civil Code §§ 51 and 52.  
9 Defendants have discriminated against Plaintiff in violation of California Civil Code §§  
10 51 and 52.

11 30. The violations of the Unruh Civil Rights Act caused Plaintiff to experience  
12 difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory  
13 damages as specified in California Civil Code §55.56(a)-(c).

14 **THIRD CAUSE OF ACTION**

15 **VIOLATION OF CALIFORNIA DISABLED PERSONS ACT**

16 31. Plaintiff incorporates by reference each of the allegations in all prior  
17 paragraphs in this complaint.

18 32. California Civil Code § 54.1(a) states, "Individuals with disabilities shall be  
19 entitled to full and equal access, as other members of the general public, to  
20 accommodations, advantages, facilities, medical facilities, including hospitals, clinics,  
21 and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles,  
22 railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes  
23 of transportation (whether private, public, franchised, licensed, contracted, or otherwise  
24 provided), telephone facilities, adoption agencies, private schools, hotels, loading places,  
25 places of public accommodations, amusement, or resort, and other places in which the  
26 general public is invited, subject only to the conditions and limitations established by  
27 law, or state or federal regulation, and applicable alike to all persons.



1           33. California Civil Code § 54.3(a) states, “Any person or persons, firm or  
2 corporation who denies or interferes with admittance to or enjoyment of public facilities  
3 as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an  
4 individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for  
5 the actual damages, and any amount as may be determined by a jury, or a court sitting  
6 without a jury, up to a maximum of three times the amount of actual damages but in no  
7 case less than one thousand dollars (\$1,000) and any attorney’s fees that may be  
8 determined by the court in addition thereto, suffered by any person denied the rights  
9 provided in Section 54, 54.1, and 54.2.

10           34. California Civil Code § 54(d) specifies, “a violation of the right of an  
11 individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also  
12 constitute a violation of this section, and nothing in this section shall be construed to limit  
13 the access of any person in violation of that act.

14           35. The actions and omissions of Defendants alleged herein constitute a denial  
15 of full and equal accommodation, advantages, and facilities by physically disabled  
16 persons within the meaning of California Civil Code § 54. Defendants have  
17 discriminated against Plaintiff in violation of California Civil Code § 54.

18           36. The violations of the California Disabled Persons Act caused Plaintiff to  
19 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for  
20 statutory damages as specified in California Civil Code §55.56(a)-(c).

21                           **FOURTH CAUSE OF ACTION**

22                           **UNFAIR COMPETITION ACT**

23           37. Plaintiff incorporates by reference each of the allegations in all prior  
24 paragraphs in this complaint.

25           38. Defendants have engaged in unfair competition, unfair or fraudulent  
26 business practices, and unfair, deceptive, untrue or misleading advertising in violation of  
27 the Unfair Competition Act. Bus & Prof. Code §§ 17200 *et seq.*

1 39. Defendants engage in business practices and policies that create systemic  
2 barriers to full and equal access for people with disability in violation of state and federal  
3 law.

4 40. The actions and omissions of Defendants are unfair and injurious to  
5 Plaintiff, a consumer of the Business' goods and services. As a result of Defendants'  
6 unfair business practice and policies, Plaintiff suffered injury in fact. Plaintiff was not  
7 provided with goods and services provided to other consumers. Plaintiff seeks relief  
8 necessary to prevent Defendants' continued unfair business practices and policies and  
9 restitution of any month that Defendants acquired by means of such unfair competition,  
10 including profits unfairly obtained.

11 **FIFTH CAUSE OF ACTION**

12 **NEGLIGENCE**

13 41. Plaintiff incorporates by reference each of the allegations in all prior  
14 paragraphs in this complaint.

15 42. Defendants have a general duty and a duty under the ADA, Unruh Civil  
16 Rights Act and California Disabled Persons Act to provide safe and accessible facilities  
17 to the Plaintiff.

18 43. Defendants breached their duty of care by violating the provisions of ADA,  
19 Unruh Civil Rights Act and California Disabled Persons Act.

20 44. As a direct and proximate result of Defendants' negligent conduct, Plaintiff  
21 has suffered damages.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff respectfully prays for relief and judgment against  
24 Defendants as follows:

25 1. For preliminary and permanent injunction directing Defendants to comply  
26 with the Americans with Disability Act and the Unruh Civil Rights Act;

27 2. Award of all appropriate damages, including but not limited to statutory  
28 damages, general damages and treble damages in amounts, according to proof;

1           3.     Award of all reasonable restitution for Defendants' unfair competition  
2 practices;

3           4.     Reasonable attorney's fees, litigation expenses, and costs of suit in this  
4 action;

5           5.     Prejudgment interest pursuant to California Civil Code § 3291; and

6           6.     Such other and further relief as the Court deems just and proper.

7                               **DEMAND FOR TRIAL BY JURY**

8           Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby  
9 demands a trial by jury on all issues so triable.

10  
11 Dated: October 4, 2022

SO. CAL. EQUAL ACCESS GROUP

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13  
14 By: /s/ Jason J. Kim  
15 Jason J. Kim, Esq.  
16 Attorneys for Plaintiff  
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